

**SECOND AMENDMENT TO  
AGREEMENT REGARDING COUNTY ROADS AND DRAINS**

THIS SECOND AMENDMENT TO AGREEMENT REGARDING COUNTY ROADS AND DRAINS (this "Second Amendment") is made and entered into as of this 15<sup>th</sup> day of June, 2020 (the "Second Amendment Effective Date"), by and between Warren County, Indiana (the "County"), and Jordan Creek Wind Farm LLC, a Delaware limited liability company qualified to do business in Indiana (the "Developer"). The County and the Developer may be referenced to herein, individually, as a "Party" and, together, as "Parties".

WITNESSETH:

**WHEREAS**, the Parties entered into an Agreement Regarding County Roads and Drains on October 12, 2016 (the "Agreement"), as amended by a First Amendment to Agreement Regarding Roads and Drains effective August 26, 2019 (the "First Amendment"). Collectively, the Agreement and the First Amendment shall hereinafter be referred to as the "Agreement". The Agreement sets forth the Developer's use of the Roads (as defined in the Agreement) in connection with the Project (as defined in the Agreement);

**WHEREAS**, the Parties mutually agree to amend the Agreement in order that Developer can pay County the costs to restore or repair the Roads post-construction, in lieu of Developer undertaking the obligation to restore or repair the Roads post-construction, as well as to replace certain exhibits as set forth herein; and

**WHEREAS**, the capitalized terms used in this Second Amendment shall have the same meaning as set out in the Agreement unless otherwise indicated.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Exhibit A to the Agreement (previously approved by the County, depicting the Roads the Developer may use with Heavy Equipment for Developer Road Operations, along with the Drain Location Map depicting any Affected Drains and Drainage Improvements) is hereby deleted in its entirety and the attached Amended Exhibit A is substituted in lieu thereof.

- A. The following Roads were previously not approved and therefore are being added to Amended Exhibit A as Project Roads as set forth in Amended Exhibit A:
- i. Approximately 1.25 miles of W 650 N between turbines 74 and 73
  - ii. Approximately .6 miles of N 600 W. This will be used to access turbines 55, 56 and 57 from W 450 N rather than W 300 N
  - iii. Approximately .25 miles of N 600 W to access turbines 38 and 39 from W 300 N.
  - iv. Approximately .9 miles of W 300 N, between N 600 W and turbine 42
  - v. Approximately 2 miles of S 700 W between and W 100 N and W 100 S. The reason for this is to access turbines 1-10 from the north rather than accessing them from SR-28.
  - vi. Approximately .43 miles of S 550 W between W Division Rd and turbine 13.
  - vii. Approximately .4 miles of division road between S 550 W and the access road to turbines 14 and 15. This addition will allow us to access turbines 11-13 from the north rather than SR-28.
  - viii. Approximately .25 miles of N 425 W, south of turbines 18 & 19 to connect to W Division Rd.

B. The following Roads were previously approved on Exhibit A but are being removed from the Amended Exhibit A and are no longer Project Roads and/or subject to the terms of the Agreement:

- i. Approximately .25 miles of W 850 N and .7 miles of N 600 W. The reason for this removal is because an alternate turbine location was removed from our plans.
- ii. Approximately .5 miles of N 500 W. and .8 miles of W 700 N due to removing an alternate turbine location
- iii. Approximately .25 miles of N 800 W (south of turbines 50-53) due to removing a turbine location
- iv. Approximately 1.6 miles of W 100 N (west of access road to turbines 24-26) due to removing an alternate turbine location
- v. Approximately .65 miles of S 700 W since we will not be accessing turbines 1-10 from SR-28
- vi. Approximately 1.5 miles of S 550 W since we will not be access turbine 11-13 from SR-28

C. All the Project Roads depicted on the Amended Exhibit A, including the roads added in Section 1(A) above are subject to the terms of this Agreement as amended.

2. Exhibit B (the Wind Farm Site Plan) - the site layout plan for the Project (previously approved by the County) is hereby deleted in its entirety and the attached Amended Exhibit B is substituted in lieu thereof.

3. Section 7 & Exhibit D (the Road and Drain Preconstruction Upgrade and Post-Construction Restoration Schedule) - the details of designated areas of certain Roads to be improved by Developer comprising Exhibit D (previously approved by the County) is hereby deleted in its entirety and the attached Amended Exhibit D is substituted in lieu thereof. Section 7 and Exhibit D to the Agreement are hereby amended to remove and delete in their entirety any obligation that: (i) Developer provide any post-construction restoration plan for each of the Roads, (ii) Developer comply with any Post-Construction Restoration specifications or schedule detailed on Exhibit D to the Agreement related to the Roads (including, without limitation, Item I. entitled "Special note pertaining to all roads" and Item IV. entitled "Post-Construction Standards" which are deleted in their entirety); and (iii) Developer provide any estimate associated with the Post-Construction Restoration costs for the Roads, it being the intent of the Parties that, except as provided in Section 28, the County shall be responsible, in all respects, for all Post-Construction Restoration upgrades, schedules, specifications and costs for the Roads, as more fully described in this Second Amendment. Therefore, on Exhibit D and as used throughout the Agreement, "Road and Drain Preconstruction Upgrade and Post-Construction Restoration Schedule" shall be substituted with Road and Drain Preconstruction Upgrade and Drain Post-Construction Restoration Schedule."

4. Section 9 - For clarification purposes, the Parties acknowledge and agree that Developer's obligation to repair the Roads during construction as set forth in Section 9 is not amended or altered by this Second Amendment. Notwithstanding the above, Developer shall repair damage caused by Developer (or Developer's contractors) during construction to the Roads identified on the Amended Exhibit D as having received no Pre-Construction Upgrade, to the standards set forth on Exhibit I at the time of substantial completion of the Project and prior to Turn Over (defined herein). At the time of substantial completion of the Project and prior to Turn Over, the County Highway Superintendent and Developer (or Developer's contractors) shall jointly inspect the Roads identified on the Amended Exhibit D as having received no Pre-Construction Upgrade, to see whether repairs are necessary to such roads in order for such roads to meet the condition established by the Road Condition Report. If the County Highway Superintendent and Developer (or Developer's contractors) fail to agree on whether repairs are necessary, or what repairs are to be performed, the Parties agree that Westwood shall perform industry acceptable engineering analysis of the road(s) in dispute to determine if, as a result of the Project's use, repairs to

said roads are required and detailing what repairs, if any, are needed in order to restore the road(s) to the condition established by the Road Condition Report. Such repairs (whether agreed upon by the Parties or established by Westwood's engineering analysis) will be performed by Developer (or Developer's contractors) at the Developer's expense, and without contribution from the Road Fund described below in Section 30.

5. The first paragraph of Section 10 of the Agreement (i.e., the first six sentences, except that the obligation to repair section corner markers in the second sentence shall remain) is hereby deleted in its entirety (for greater clarity, in order to remove any obligation that Developer repair or restore the Roads after the completion of construction of the Project Facilities and limiting Developer's Post-Construction Restoration obligation to the Drainage Improvements) and consistent with that intent, the following is substituted in lieu thereof:

**Section 10. *Repair of Drainage Damage after Construction Completion.*** Upon completion of construction of the Project Facilities, Developer will repair or pay for the repair of all damage to the Drainage Improvements resulting from Developer's use of the Roads (but not other causes) during the construction of the Project Facilities (including, without limitation, the culvert located on County Road 600 West, between County Road 300 North and County Road 450 North), based on the Road and Drain Preconstruction Upgrade and Post-Construction Restoration Schedule, set forth in Exhibit D. For purposes of this Agreement, damage to any Drainage Improvements may also include damages occurring within the County's seventy-five (75) foot maintenance right-of-entry under I.C. §36-9-27-33, if such damage either denies, impedes, or affects the County's ability to exercise drain maintenance within its right-of-entry, and damages to Drainage Improvements shall include any damage to adjoining property that resulted from the use or repair of the Drainage Improvements. Such repairs to Drainage Improvements will be performed by Developer (or Developer's contractors) at Developer's expense and without contribution from the Road Fund described below in Section 30.

The first sentence of the second paragraph of Section 10 to the Agreement is hereby amended to remove the following: "(or with respect to road repairs the start date of which is determined to be between September and the following February, then by the following May 1)." Further, the last sentence of the second paragraph of Section 10 of the Agreement is hereby amended to clarify that after the completion of construction, the Financial Assurance may only be used to make repairs to Drain Improvements. In all other respects, Section 10 shall remain the same.

6. Section 13 of the Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

**Section 13. *Warranty.*** Developer warrants that all materials supplied and workmanship performed by Developer to satisfy its obligation to upgrade the Drainage Improvements resulting from their use by Developer during the construction of the Project Facilities pursuant to Sections 7, 8, 9 and 10 of this Agreement will be free from defects for a period of two (2) years after the Completion Date (as defined in Section 11(c) of this Agreement), except that the warranty period shall be five (5) years for drainage tiles in County rights-of-way. THE WARRANTY SET FORTH IN THIS SECTION 13 IS EXCLUSIVE AND IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CUSTOM, USAGE OR OTHERWISE. EXCEPT AS SET FORTH IN THIS SECTION 13, THERE ARE NO OTHER WARRANTIES, AGREEMENTS OR UNDERSTANDINGS AND NO OTHER WARRANTY, ORAL OR WRITTEN, WHICH MIGHT HAVE BEEN GIVEN BY AN EMPLOYEE, AGENT, OR

REPRESENTATIVE OF DEVELOPER AUTHORIZED BY DEVELOPER. DEVELOPER IS NOT AND SHALL NOT BE HELD LIABLE FOR ANY ALLEGED BREACH OF THE WARRANTY GIVEN IN THIS SECTION 13 CAUSED BY OR ARISING OUT OF ORDINARY WEAR AND TEAR. Notwithstanding anything in this Agreement to the contrary, Developer shall be responsible for any damage that it or its employees, contractors or subcontractors cause to the Drainage Improvements that occur after the completion of construction of the Project Facilities.

7. Section 11. County Inspector. Section 11 of the Agreement is hereby amended in order to delete the words "Roads and Drainage Improvements" throughout Section 11 and substitute it with "Drainage Improvements."

8. Section 12. Financial Assurance. Section 12 of the Agreement is hereby amended as follows:

(a) "Roads and Drainage Improvements" is deleted in the second sentence to Section 12.(a) and in Section 12.(e) of the Agreement and replaced with "Drainage Improvements."

(b) Section 12(b) of the Agreement is amended in order to make clear that following the completion of the construction of the Project Facilities, "Roads and Drainage Improvements" as used in Section 12.(b) shall mean "Drainage Improvements."

(c) Section 12(g) shall be deleted in its entirety and replaced with the following: "Upon the completion of the construction of the Project Facilities and the delivery of the Road Fund (defined herein), the County shall return the Performance Guarantee (or to the extent the County has drawn on the Performance Guarantee to pay for repairs during the construction of the Project Facilities, the remaining portion thereof), to Developer.

9. Section 28 of the Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

**Section 28. *Indemnification*:** Developer shall indemnify, defend, and hold harmless the County and its officials, officers, employees, agents, successors, and assigns, from any and all claims, suits, liability, damages, losses, reasonable attorney's fees, and costs, arising or resulting from, relating to, or in any way connected with the preparation and construction of the Project Facilities prior to the Turn Over which may be asserted prior to or after the Turn Over, including third party claims asserted during the applicable statute of limitations period regarding preparation and construction of the Project Facilities prior to the Turn Over ("Turn Over Liability"); otherwise, Post Turn Over, indemnity liability shall be limited to payment from the Road Fund. Furthermore, Post Turn Over, this indemnity shall apply to the obligations of Developer with regard to Drainage Improvements as set forth in Sections 7, 10, 13 and 30 hereof.

(a) A new Section 30 shall be added to the Agreement:

**Section 30. *Reconstruction of Roads after Construction Completion of Project Facilities:*** After Construction of the Project Facilities is complete, the Parties agree as follows:

- i. Developer agrees to pay to the Warren County Treasurer, in a designated separate account, to be paid by Developer at the time of substantial completion of the Project as determined by Developer ("Turn Over"), the following amount to be used by County to repair, restore and reconstruct the Roads ("Road Fund"): Two Million Five Hundred Thousand Dollars

(\$2,500,000), in lieu of Developer's obligation thereto. Any subsequent liability of Developer under this Agreement or otherwise to County shall be limited to the amount of the Road Fund, except as to Post Turn Over Liability as set out in Section 28 hereof, and further except for Developer's responsibility for repair or replacement of Drainage Improvements as set forth in Sections 7, 10 and 13 hereof and any liability of Developer under the indemnity provision set out in Section 28 hereof.

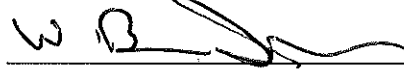
- ii. The Parties agree that the amount determined under Section 30(i) above will be increased or decreased by mutual agreement if any roads are added or removed to the Roads identified under this Agreement.

(b) Amendment. This Second Amendment may be amended, modified, renewed, or extended only by written instrument executed in a manner of its original execution. This Second Amendment, together with the Agreement, contains the entire agreement of the Parties with regards to this subject matter and no representation, inducements, or agreements, oral or otherwise between the Parties not contained or embodied in this Second Amendment and the Agreement shall be of any force or effect. This Second Amendment shall be governed by and construed according to the laws of the State of Indiana. This Second Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which counterparts collectively shall constitute one (1) instrument representing this Second Amendment. Furthermore, either Party may execute this Second Amendment by means of an electronic signature. Such electronic signature shall be deemed authentic and valid, if such electronic signature is received by the other Party. The recitals first written above are hereby incorporated into this Second Amendment by this reference.

**IN WITNESS WHEREOF**, the Parties have duly executed this Second Amendment pursuant to all requisite authorizations as of the Second Amendment Effective Date.

**WARREN COUNTY, INDIANA**

By: Board of Commissioners of Warren County,  
Indiana



Brian Jordan

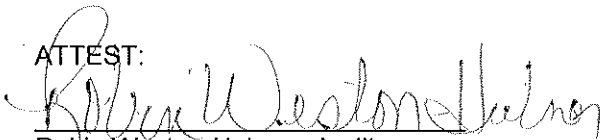


Clay Andrews



Adam Hanthorne

ATTEST:



Robin Weston-Hubner, Auditor  
Warren County, Indiana

**JORDAN CREEK WIND FARM LLC**  
a Delaware limited liability company

By:   
Printed: John Di Donato  
Its: Vice President

**Amended Exhibit A**  
**Roads and Affected Drains**

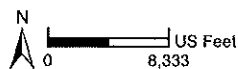
**See attached**



Data Source(s): Yestupod (2020).

### Legend

- Culvert       Haul Road  
 Bridge       Road  
 State Haul Road



## Jordan Creek Wind Project

Warren and Benton Counties, Indiana

## Culvert and Bridge Inventory

## Westwood

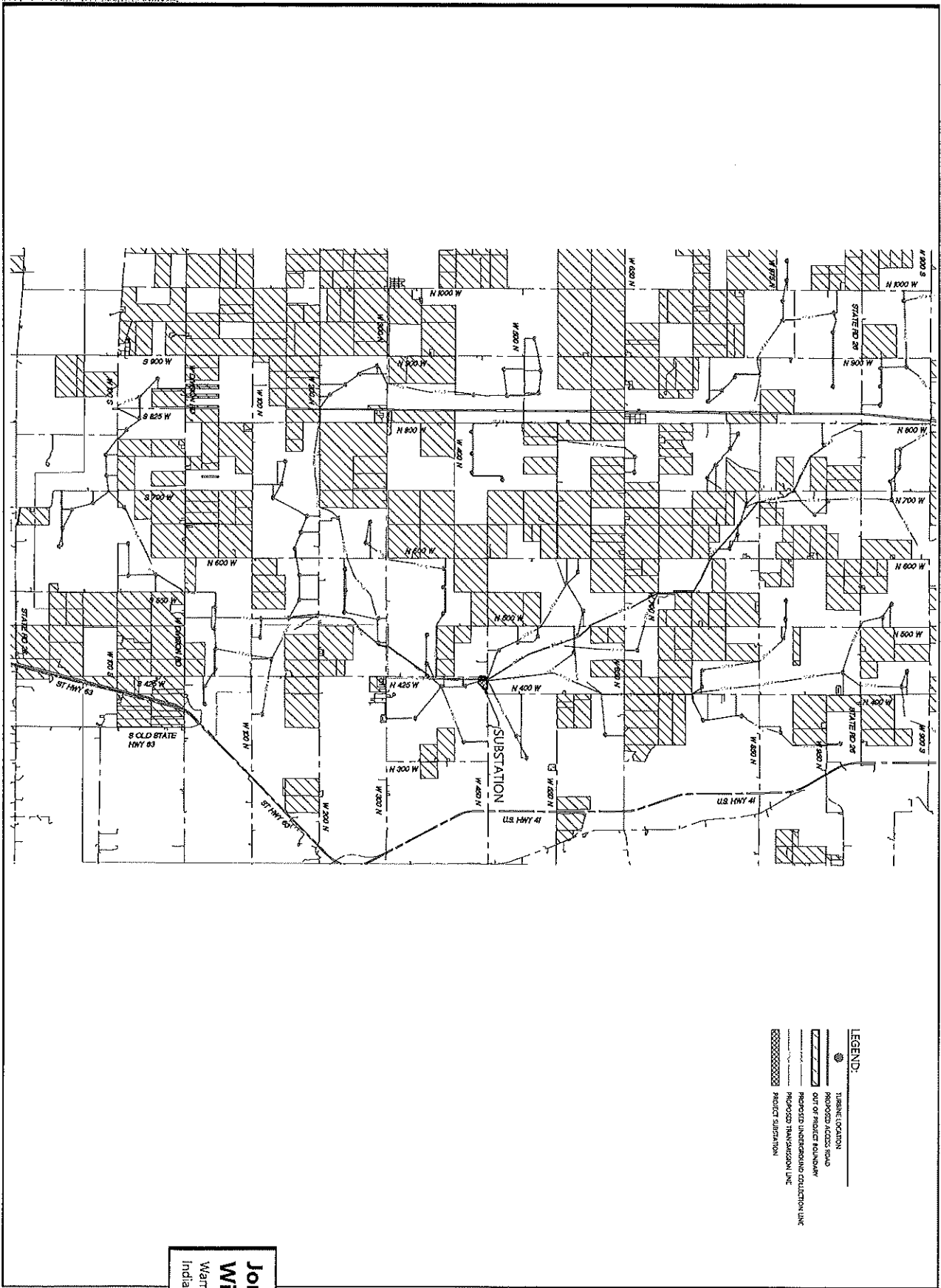
Toll-free (888) 637-5150 [westwood.proform](http://westwood.proform)  
Westwood Professional Services, Inc.

May 3, 2020

**Amended Exhibit B**  
**Wind Farm Site Plan**

**See attached**



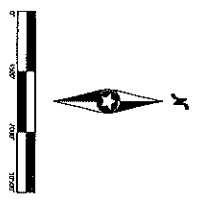


**LEGEND:**

- TOWER LOCATION
- PROPOSED ACCESS ROAD
- OUT OF PROJECT BOUNDARY
- PROPOSED UNDERGROUND COLLECTION LINE
- PROPOSED TRANSMISSION LINE
- PROJECT SUBSTATION

**Westwood**  
 700 Universal Blvd  
 Suite 200  
 Jupiter, FL 33458  
 Phone: 561.744.1111  
 Fax: 561.744.1112  
 Email: info@westwoodenergy.com  
 Website: www.westwoodenergy.com

**NextEra Energy**  
 700 Universal Blvd  
 Suite 200  
 Jupiter, FL 33458  
 Phone: 561.744.1111  
 Fax: 561.744.1112  
 Email: info@nexteraenergy.com  
 Website: www.nexteraenergy.com



**Jordan Creek Wind Project**  
 Warren and Benton Counties,  
 Indiana

Exhibit B - Warren  
 County Proposed  
 Road Entrances

NOT FOR CONSTRUCTION

DATE: 6/03/2020  
 SHEET: 1

**Amended Exhibit D**  
**Road and Drain Preconstruction Upgrade and**  
**Drain Postconstruction Restoration Schedule**

**(see attached)**

NO.	DATE	DESCRIPTION
1	06/01/20	ISSUED FOR PERMITTING
2	06/01/20	ISSUED FOR PERMITTING
3	06/01/20	ISSUED FOR PERMITTING
4	06/01/20	ISSUED FOR PERMITTING
5	06/01/20	ISSUED FOR PERMITTING
6	06/01/20	ISSUED FOR PERMITTING
7	06/01/20	ISSUED FOR PERMITTING
8	06/01/20	ISSUED FOR PERMITTING
9	06/01/20	ISSUED FOR PERMITTING
10	06/01/20	ISSUED FOR PERMITTING



**Jordan Creek  
 Wind Project**  
 Warren and Benton Counties,  
 Indiana

Exhibit D - Warren  
 County Final Road  
 Improvements

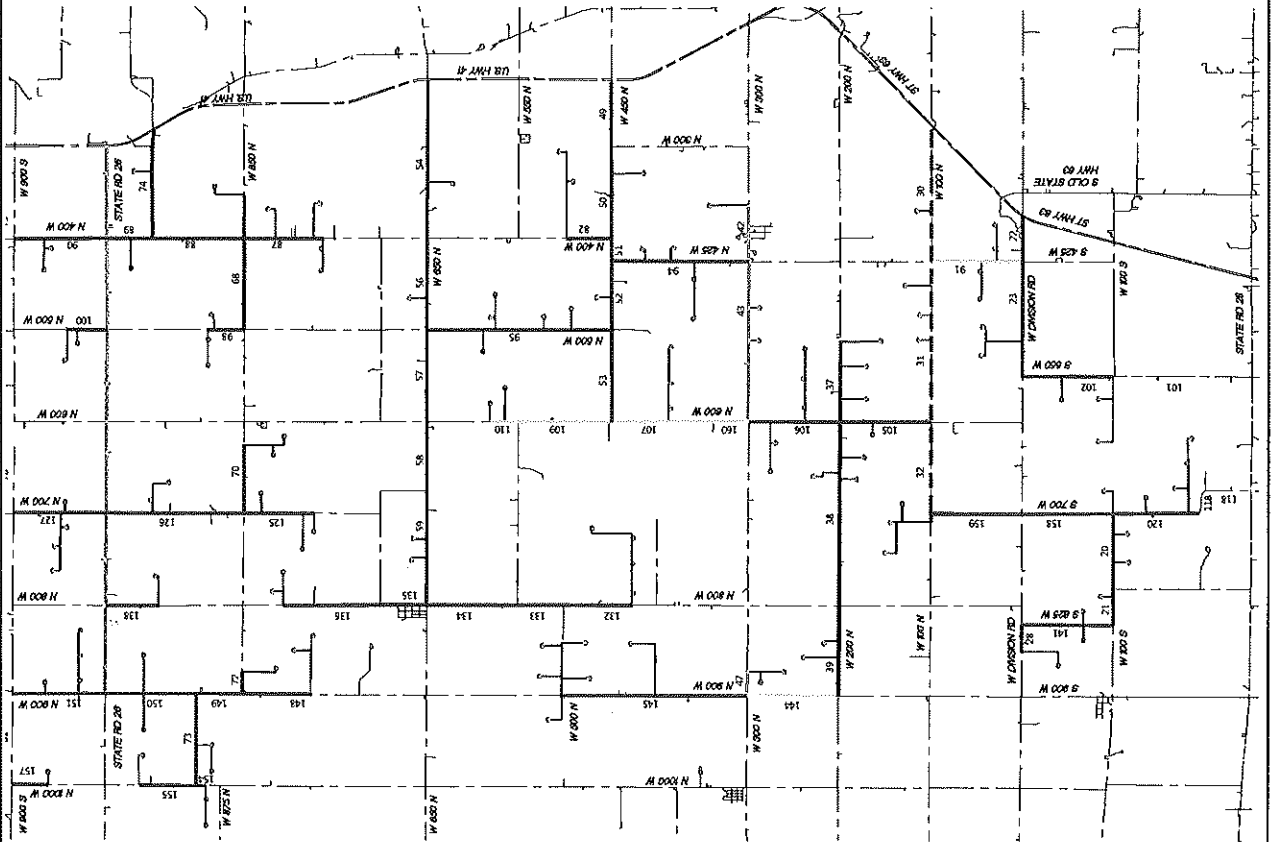
NOT FOR CONSTRUCTION

DATE: 6/04/2020

SHEET: 2

**LEGEND:**

- TURNING LOCATION
- ROAD RIGHT-OF-WAY
- ROAD RIGHT-OF-WAY
- STATE ROAD RIGHT-OF-WAY
- STATE ROAD RIGHT-OF-WAY
- PRE-CONSTRUCTION COUNTY STABILIZED WITH 4" OF AGGREGATE
- PRE-CONSTRUCTION COUNTY STABILIZED WITH 4" OF AGGREGATE
- PRE-CONSTRUCTION DOTTED GRADE ROAD WITH GEOTEXT AND 4" OF AGGREGATE
- ROAD SEGMENT ID



**Exhibit I**  
**Repairing Damage Post Construction to**  
**Roads Receiving No Pre-Construction Upgrades**

1. Mill and remove 5" of existing asphalt (disposal site at the County Highway Supervisor's reasonable discretion).
2. Compact remaining existing roadway material.
3. Furnish, place, and compact HMA 19.00 mm intermediate to an average depth of 3".
4. Furnish, place, and compact HMA 9.5mm Surface to an average depth of 2".